

## Case law

### Case Details

**National ID:** 1275/2011, VII d.

**Member State:** Bulgaria

**Common Name:** link

**Decision type:** Supreme court decision

**Decision date:** 16/06/2011

**Court:** Supreme Administrative Court (Sofia)

**Subject:**

**Plaintiff:** Bulgarian Telecommunication Company AD

**Defendant:** Consumer Protection Commission

**Keywords:** average consumer, false impression, statistics, telephone

### Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Article 5, 2., \(b\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1., \(b\)](#)

### Headnote

In an assessment, whether an advertisement misleads about the quantity of the goods/services advertised, account should be taken also of the likelihood that an average consumer uses the entire amount offered.

To advertise a service as "unlimited" when the service in fact has a limit, does not constitute a misleading commercial practice if the limit is so high that it is in practice impossible for an average consumer to reach it.

### Facts

The plaintiff, a telecoms operator, offered a package of fixed-line telephone services. The package was advertised in a way that suggested a possible "unlimited" use of fixed telephone services. In fact, they were limited to 3,600 minutes of telephone calls.

The defendant, a consumer protection authority, held that this way of advertising was misleading irrespective of the fact that the limit on fixed-line calls was so high that an average consumer could not exceed it in practice.

### Legal issue

The court held that the expression "unlimited" used to describe the amount of services offered should not be interpreted literally when establishing the misleading nature of the advertisement.

Rather, the advertisement should be assessed against the actual consumption of such service by an average consumer.

Data regarding the actual consumption in the plaintiff's fixed telephony network showed that a single consumer had never placed fixed-line telephone calls exceeding the limit of 3,600 minutes. This led the court to the conclusion that the offer for 3,600 minutes of fixed-line calls was equivalent to providing an unlimited service.

Moreover, the information about the limit was available on the plaintiff's website. Each consumer with internet access could become aware of the applicable limit and take an informed decision regarding the acceptability of the offer.

As a result, the court concluded that the defendant's finding that the advertisement was misleading was unfounded.

### Decision

Does advertising a service as "unlimited", whereas the service in fact is limited, constitute a misleading commercial practice, taking into consideration that the applicable limit is so high that it is in practice impossible for an average consumer to exceed it?

URL: <http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/ebc25343f6917aa8c22578a9004991df?OpenDocument>

Full text: [Full text](#)

### Related Cases

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### Legal Literature

No results available

### Result

The court rejected the defendant's ruling that the plaintiff breached the consumer protection rules. The appeal was upheld.